

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1975

No. 75-1318

CECLE G. PEARSON,
Appellant
versus
W. P. DODD; ERNESTINE DODD,
his wife; and COLUMBIA GAS TRANSMISSION
CORPORATION,
Appellees.

ON APPEAL FROM A DECISION OF THE
SUPREME COURT OF APPEALS OF WEST VIRGINIA

Supplemental Brief to the Supreme Court of the
United States, to The Jurisdictional Statement,
as requested from Appellant, Cecle G. Pearson,
concerning the requirements of Rule 15-1-(d),
relating to Due Process.

Philip G. Terrie
1009 Security Building
Charleston, West Virginia 25301

Counsel for Appellant

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Counsel for Appellant

Pursuant to the request of the Supreme Court of the United States, for further information under Rule 15-1-(d), of the Supreme Court of the United States, which request was made to counsel for the Appellant by letter of the Clerk of the Supreme Court of the United States, Michael Rodak, Jr., dated May 21, 1976, the Appellant submits the following:

I.

The suit as filed seeks to set aside the property assessment on which the tax sale in 1966 is predicated, or in the alternative to hold that the 1966 sale was void for several reasons, including failure to follow Due Process requirements. The Sheriff's sale in 1962, referred to in the letter of May 21, 1976, was questioned as a part of the two prongs of attack. If the assessment was void then everything subsequent thereto was void, including the 1962 Sheriff's sale; and the 1966 Delinquent Land Commissioner's sale. The Appellant was unsuccessful in her assertions in this area in both of the Lower Courts. No Federal question was presented, under the first theory. Under the second theory, the attack on the 1966 Delinquent Land Commissioner's suit, one element which was given for the sale to be void was the element of Due Process. Under Part II of this brief, the record references to this element are contained

II.

DUE PROCESS

This general issue as enunciated in the first argument of the Jurisdictional Statement previously filed with this court was raised as soon as the practice and pleading rules of the State Court in West Virginia would permit, and strongly asserted and briefed at every appropriate opportunity through the long and sometimes arduous steps of this litigation, including the previously referred to assertion in the Jurisdictional Statement to this Court. Due to the form of notice pleading practiced in the State of West Virginia, a form of practice which is very similar to the Federal Rules of Civil Procedure, and also due to the equity nature of this proceeding, the first opportunity for this matter of Due Process to be raised in this action in the Court of first instance was with the initial brief of Appellant, dated August 16, 1971, and filed in the Circuit Court of Kanawha County, West Virginia, on the same date. A brief excerpt from this Memorandum of Law, the Court of first instance under Item III as therein contained, pages 55, 56 and 57 stated:

"III. DUE PROCESS WAS NOT AFFORDED THE PLAINTIFF IN THE TAX SALE PROCEEDING UNDER WEST VIRGINIA CODE, CHAPTER 11A, ARTICLE 4, S 12, (MICHIE 1966), AND UNDER THE PROPER INTERPRETATION OF STATE V. SIMMONS 135 W. VA. 196, 64 S. E. 2d 503 (1951) AND UNDER PROPER INTERPRETATION OF RECENT DECISIONS OF THE UNITED STATES SUPREME COURT CONCERNING THE

DUE PROCESS CLAUSE."

"A. DUE PROCESS."

"The Due Process issue as it specifically applies to this is stated:

Whether in a suit instituted by the State under the provisions of W. Va. Code Ch. 11A-4-1, Michie (1966), for the purpose of selling, for the benefit of the school fund, lands which have been forfeited or sold to the State for taxes, the owner of the land, who, at the time of the institution of the suit is a resident of the County in which such land is situated and whose right to the land is evidenced by a deed recorded 27 years before the institution of the suit may be proceeded against by being named in the publication as an unknown defendant and the land proceeded against misdescribed so as not to identify the land?"

"Attacks on titles obtained through tax sales may substantively be made where the facts make it possible by attacking (1) the validity of the assessment itself, (2) by attacking the validity of the tax sale procedures which are not obliterated by the curative statutes governing and (3) by attacking the process used in the proceedings.

"All of these lines of attack have the common bond of jurisdiction which when upheld, either singularly or collectively, create a void tax sale. All too frequently they are intertwined, in the Court decisions creating some confusion in the cases. The plaintiff has made her case for a void assessment and failing a void assessment for failure in the procedures followed in the tax sale procedure itself under W. Va. Code Ch. 11A, Art. 4, et seq. (Michie

1966). Now follows a discussion of the last major substantive issue of due process and its meaning to this case.

"Perhaps the most ringing debate in suits to set aside tax sales either at the sheriff's sales or Deputy Commissioner's sales has revolved around the matter of "notice" to the true owner. This, no doubt, stems from the inherent part of the organic law of West Virginia and of the United States of America requiring that an individual should have notice of any proceeding which affects his life, liberty or property."

"Sec. 1 of the Fourteenth Amendment to the United States Constitution states in part:"

"No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

"The Plaintiff is asking only that she be given equal protection of the law in her property rights as has been extended to the field of freedoms of the individual in recent times."

The discussion of Due Process in this brief is contained on p.p. 55 to 74, both inclusive.

This issue of Due Process was again referred to in the reply of the Appellant, Cecle G. Pearson, dated October 30, 1971,

which was filed October 29, 1971. Both of the previously referred to briefs have been forwarded to this Court by the Clerk of the Circuit Court of Kanawha County, West Virginia, on May 26, 1976, pursuant to a letter by the undersigned dated May 25, 1976, copy attached. These briefs are both part of the original record in this matter pursuant to W. Va. Rules of Civil Procedure, Rule 5 (e) as follows:

"(e) Filing with the Court Defined. The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk of the court, who shall note thereon the filing date, except that the judge may permit the papers to be filed with him, in which event he shall note thereon the filing date and forthwith transmit them to the office of the clerk; the notation by the clerk or the judge of the filing date on any such paper constitutes the filing of such paper, and such paper then becomes a part of the record in the action without any order of the court."

The Court of first instance in its letter memorandum of opinion dated April 17, 1972, ruled adversely to the Appellant's position with regard to the Due Process issue. This opinion and the particular reference to Due Process in the opinion of the Court of first instance is found on page 35A of the Jurisdictional Statement.

The issue was again continued with the court of first instance in a motion to set aside judgment, which was filed June 21, 1972, and overruled June 21, 1972, by order. Under Paragraph 5 of that motion it states: "5. Moves the Court to amend its findings of fact and conclusions of Law as hereinbefore set out in that Due Process was not afforded the

Plaintiff in the tax sale proceedings under the W. Va. Code" (see p.p. 268-273 record).

The next opportunity to present the due process issue was afforded in the petition seeking an appeal, writ of error and supersedeas to the judgment of the Circuit Court of Kanawha County, West Virginia, (see p.p. 1-14). The direct assignments of error affecting due process are to be found under the topic heading Assignment of Error, at pages 12 and 13, of the petition of appellant seeking an appeal, writ of error or supersedeas, under Paragraphs 4 and 8 as follows: "4. The Circuit Court of Kanawha County, West Virginia, erred in its findings of fact and conclusion of Law that due process was afforded the Plaintiff in the tax sales proceedings under the W. Va. Code." "8. The Circuit Court of Kanawha County, West Virginia, erred in its refusal, upon motion, to set aside its judgment order of June 19, 1972, and to award a new trial."

The Due Process issue was further supported in the note of argument on behalf of Cecle G. Pearson filed in support of the petition seeking an appeal, writ of error or supersedeas under the 4th topic under Assignment of Error, p.p. 16-25.

Appellant in her brief before the Supreme Court of Appeals of West Virginia, dated August 14, 1973, and duly filed in that Court further discussed the Due Process issue at great length. This issue was primarily discussed, p.p. 73-93 of this brief.

This issue was again strongly referred to in the Appellant's

reply brief in the Supreme Court of Appeals in West Virginia, dated September 14, 1973.

Copies of all the briefs filed in the Supreme Court of Appeals of West Virginia, on behalf of Cecle G. Pearson, are to be filed with this Court no later than June 1, 1976, pursuant, to a request by the undersigned to the Hon. George W. Singleton, Clerk of the Supreme Court of Appeals, of West Virginia, copy attached. The opinion of the Supreme Court of Appeals of West Virginia, filed December 18, 1975, which was written by the Chief Justice of the Supreme Court of Appeals of West Virginia, Charles H. Haden, II, a decision containing 15 syllabi, devoted 5 syllabi, to the problem associated with Due Process in this case. Those syllabi pertaining to Due Process are Nos. 7, 8, 9, 12 and 14. This opinion is published in the Appendix to the Jurisdictional Statement.

The issue of Due Process has again been raised in the Jurisdictional Statement previously filed in both arguments.

In each and every step of the way where it was procedurally appropriate under West Virginia Rules of Civil Procedure, and the custom of practice before the Courts governed thereby, the Appellant herein raised this question of Due Process in the proper manner, and when overruled makes specific reference to the Due Process issue in order to preserve and save the issue for its potential and ultimate presentation before this Court.

III.

With regard to the second issue presented in the JURISDICTIONAL STATEMENT: "West Virginia Code, 11A-3-8, Denies Due Process of Law to an owner whose property interest has been sold at a Tax Sale when Statute is invoked to Bar the Owner from Attacking the Validity of the Sale" the Appellant is compelled to make the two following observations with regard to the raising of this issue:

1. This issue was raised by the West Virginia Supreme Court of Appeals in an opinion dated December 18, 1975. This issue which the appellant strongly resists as a valid issue, but one raised by the West Virginia Supreme Court of Appeals, as the blocking issue enabling it to refrain from deciding the first issue, was never before the court of first instance at all. The Appellees did not raise this issue as a valid defense in their respective answers as is pointed out on page 11 of the jurisdictional statement of Appellant. If this issue, which is in the nature of a Statute of Limitations, although called a Statutory Entitlement, was to have been raised, it should have been properly raised by the Appellees in the initial pleadings, as this issue (statutory entitlement) is no more than a contrived statute of limitations (something which must be affirmatively pleaded according to the West Virginia Rules of Civil Procedure - see: Jurisdictional Statement), which is used to throw a road-block in front of a meaningful decision on this most important issue, the main Due Process issue, second presented

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in this supplemental brief.

2. Since this issue was never presented before the decision by the West Virginia Supreme Court of Appeals, on December 18, 1975, it was impossible for the Appellant to respond, until the presentation of the jurisdictional statement before this Court. This issue, unlike the first issue which it was the duty of the Appellant to raise and which the record more than clearly illustrates, was carefully and dutifully raised, was not the responsibility of Appellant to raise, but was the responsibility of the Appellees to raise. In this particular instance, however, the appellees were afforded the assistance of the West Virginia Supreme Court of Appeals, when the court developed this issue without the insistence of the Appellees.

With due respect for the record, and with further respect for the question that may be raised as it was in the per curiam opinion of this court in the case of Paschall v. Christie-Stewart, Inc. 414 U. S. 100 (1973), (incidentally a case that is once again before this court on a writ of Certiorari, No. 75-1435), this second issue, as raised by the West Virginia Supreme Court of Appeals, may be found by this Court as it was in Paschall v. Christie, to be premature. It is not a premature issue for the reason that this issue, regardless of its initial integrity, has been ruled on by the highest tribunal of the State of West Virginia, that this ruling has been vigorously questioned by the Appellant herein, and that there is no justification for sending

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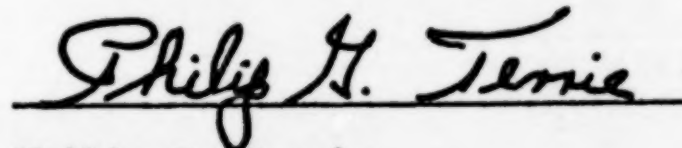
this issue back to a lower jurisdiction for further deliberation, as was done in the Christie case.

CONCLUSION

It would have been impossible for the Appellant to raise Due Process in any other part of the Proceeding or in another suit. The Appellant had no Notice of the Sheriff's sale in 1962, until after the conclusion of the Deputy Commissioner's sale in 1966. It would have been pointless to have attacked the Sheriff's sale to the State in this proceeding as being violative of Due Process because the sale procedure had already progressed through to the second sale, the Deputy Commissioner's sale. This was the sale to attack and the Due Process case proceeded on that basis.

With this supplement to the Jurisdictional Statement the Appellant expresses her appreciation to the Court for requesting this additional information.

Respectfully submitted,



Philip G. Terrie
1009 Security Building
Charleston, West Virginia 25301

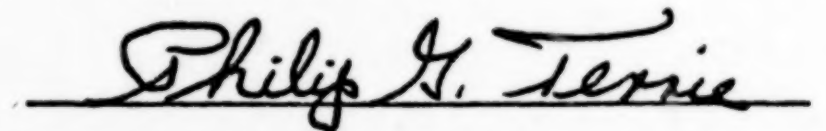
Counsel for Appellant

AFFIDAVIT OF SERVICE OF
SUPPLEMENTAL BRIEF TO JURISDICTIONAL STATEMENT

STATE OF WEST VIRGINIA,

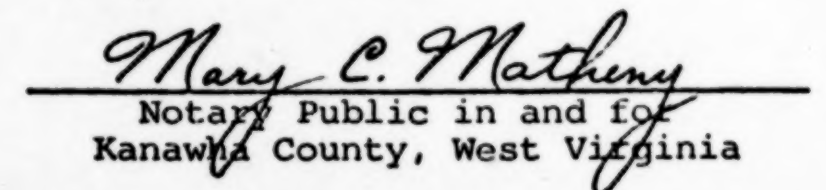
COUNTY OF KANAWHA, TO-WIT:

I, PHILIP G. TERRIE, attorney for Cecle G. Pearson, Appellant herein, depose and say that on the 28th day of May, 1976, I served two copies of the foregoing Supplemental Brief to Jurisdictional Statement to the Supreme Court of the United States upon W. P. Dodd and Ernestine Dodd, his wife, Appellees herein, by delivering the same to William E. Hamb, counsel of record for said W. P. Dodd and Ernestine Dodd, at his office at 950 Kanawha Boulevard, East, Charleston, West Virginia 25301, and, further, that I served two copies of the foregoing Supplemental Brief to Jurisdictional Statement to the Supreme Court of the United States upon Columbia Gas Transmission Corporation, Appellee herein, by delivering the same to William Roy Rice, counsel of record for said Columbia Gas Transmission Corporation, at his office at 1700 MacCorkle Avenue, S. E., Charleston, West Virginia 25304.



Subscribed and sworn to before me by Philip G. Terrie, at Charleston, West Virginia, this 28th day of May, 1976.

My commission expires September 24, 1978.


Notary Public in and for
Kanawha County, West Virginia

May 25, 1976

George W. Singleton, Clerk
West Virginia Supreme Court of Appeals
State Capitol
Charleston, West Virginia 25305

Re: Cecle G. Pearson v. W. P. Dodd, et al.

Dear Mr. Singleton:

Hon. Michael Rodak, Jr., Clerk of the Supreme Court of the United States, has requested that the Appellant in the subject action, Cecle G. Pearson, my client, furnish certain information to the Court as outlined in his letter to me dated May 21, 1976, a copy of which letter is attached hereto, relating to Rule 15-1 (d), of the Court.

In order that I may comply with this request, I respectfully ask you to furnish immediately to Mr. Rodak, the Briefs filed on behalf of the Appellant before the W. Va. Supreme Court of Appeals.

Sincerely,

Philip G. Terrie

PGT:em

Enclosure

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D. C. 20543

May 21, 1976

Philip G. Terrie, Esq.
1009 Security Building
Charleston, West Virginia 25301

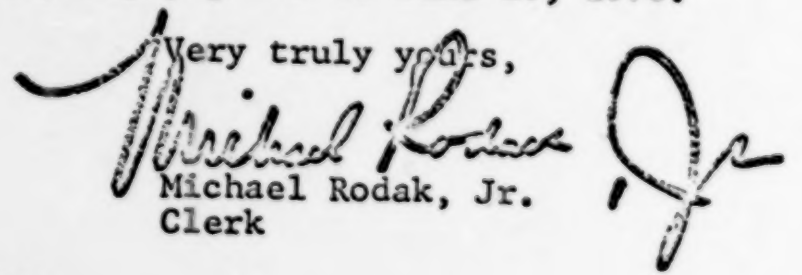
Re: Cecle G. Pearson v. W. P. Dodd, et al.
No. 75-1318

Dear Mr. Terrie:

The appellant in the above-entitled case is requested to inform the Court at the earliest opportunity, but no later than June 1, 1976, whether the validity of the 1962 sale to the State of the subject property was challenged in the state courts under the Due Process Clause of the United States Constitution and, if so, to "specify the stage in the proceedings in the court of first instance, and in the appellate court, at which, and the manner in which, the federal questions sought to be reviewed were raised; the method of raising them (e.g., by a pleading, by request to charge and exceptions, by assignment of error); and the way in which they were passed upon by the court; with such pertinent quotations of specific portions of the record, or summary thereof, with specific reference to the places in the record where the matter appears (e.g., ruling on exception, portion of the court's charge and exception thereto, assignment of error) as will support the assertion that the rulings of the court were of a nature to bring the case within the statutory provision believed to confer jurisdiction on this court." See Rule 15-1-(d).

The appellees may reply prior to June 10, 1976.

Very truly yours,


Michael Rodak, Jr.
Clerk

cc: William E. Hamb, Esq.
William Roy Rice, Esq.

May 25, 1976

Phyllis J. Rutledge
Circuit Clerk of
Kanawha County
Charleston, West Virginia

Re: Cecle G. Pearson v. W. P. Dodd, et al.

Dear Mrs. Rutledge:

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Enclosures

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
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May 21, 1976

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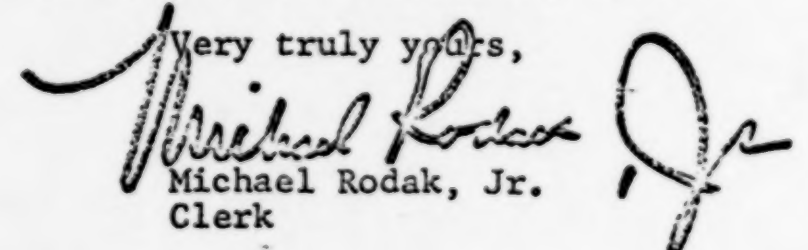
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Michael Rodak, Jr.
Clerk

cc: William E. Hamb, Esq.
William Roy Rice, Esq.